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11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15  
16 STUART L. PETERSON,  
17 Plaintiff,

18 v.

19 AWJ GLOBAL SUSTAINABLE FUND, LP,  
20 Defendant.

CASE NO. \_\_\_\_\_

**COMPLAINT**

**NATURE OF THIS ACTION**

1  
2           1.       This is an action for breach of contract and, in the alternative, unjust enrichment  
3 brought by Stuart L. Peterson (“Plaintiff”) based on an erroneous distribution of \$778,244.35 on  
4 April 26, 2012 to defendant AWJ Global Sustainable Fund, LP (“AWJ”), in connection with  
5 AWJ’s investment in Artis Clean Tech Partners (Institutional), L.P. (the “Fund”).

6           2.       Plaintiff is the President and Portfolio Manager of Artis Capital Management, LP  
7 (“Artis”), the General Partner of the Fund.

8           3.       After AWJ refused to return the windfall it received due to an administrative error,  
9 in direct violation of the Fund’s limited partnership agreement (the “LP Agreement”), Plaintiff,  
10 himself also a limited partner investor in the Fund, forwent distributions otherwise owed to him  
11 so that the Fund’s other investors would not experience any shortfall. Plaintiff brings this action  
12 after the Fund assigned to Plaintiff all of its right, title, and interest in all causes of action against  
13 AWJ or any other party arising out of the overpayment to AWJ.

14           4.       AWJ is a Minneapolis, Minnesota-based “fund of funds” that makes investments  
15 in other hedge funds. AWJ is a limited partner investor in the Fund.

16           5.       On April 26, 2012, Goldman Sachs (Cayman) Trust, Limited (“Goldman”), as the  
17 administrator for the Fund, distributed a payment to AWJ that, due to an administrative error by  
18 Goldman, overpaid AWJ in the amount of \$778,244.35. Instead of being distributed to AWJ, the  
19 overpaid amount of \$778,244.35 in funds should have been allocated to AWJ’s so-called  
20 “Liquidating Capital Account” to be held by the Fund.

21           6.       Under the terms of the LP Agreement, the funds allocated to AWJ’s Liquidating  
22 Capital Account are not to be included in AWJ’s regular Capital Account as a limited partner of  
23 the Fund, and specifically may not be withdrawn from the Fund by AWJ.

24           7.       Under the terms of the LP Agreement, Artis had the sole discretion as the General  
25 Partner of the Fund to distribute AWJ’s Liquidating Capital Account funds when it deems  
26 appropriate. Artis did not and does not authorize the erroneous overpayment by Goldman to  
27 AWJ of \$778,244.35. Pursuant to the express terms of the LP Agreement, these funds were  
28 required to be returned to AWJ’s Liquidating Capital Account in the Fund.

1           8.       Plaintiff is informed and believes that AWJ was promptly notified by Goldman via  
2 email of Goldman's administrative error only three business days after AWJ's receipt of the  
3 \$778,244.35 overpayment. Despite this notification, AWJ refused to return the overpaid funds.

4           9.       On May 18, 2012, Artis send AWJ a formal letter on behalf of the Fund detailing  
5 the nature of the erroneous overpayment, explaining AWJ's contractual obligations under the LP  
6 Agreement to return the overpayment to the Fund, and requesting the immediate return of the full  
7 amount of the \$778,244.35 overpayment. Despite this notification, AWJ refused to return the  
8 overpaid funds.

9           10.      Despite receiving the overpayment of \$778,244.35, AWJ still retained its interest  
10 in its Liquidating Capital Account in the Fund pursuant to the LP Agreement. By refusing to  
11 return the amounts distributed in error from the Fund's regular Capital Accounts, AWJ has  
12 misappropriated value and liquidity from the Fund and its investors, including Plaintiff.

13           11.      To ensure there would be no harm to the Fund and the other investors, Plaintiff,  
14 himself a limited partner in the Fund, volunteered to have funds otherwise due to him from the  
15 Fund withheld to cover the deficit. And with Plaintiff having stepped forward to cover the  
16 shortfall resulting from AWJ's misappropriation, Artis, as general partner of the Fund, assigned  
17 all of the Fund's right, title and interest in and to any causes of actions against AWJ to Plaintiff.

18           12.      Plaintiff is informed and believes that AWJ has refused to return the overpayment  
19 plus interest, not because it disagrees with the fact that Goldman's April 26, 2012 distribution was  
20 paid out to AWJ in error, but because AWJ is dissatisfied with Artis's decision to establish the  
21 Liquidating Capital Accounts for the Fund's investors in the first place.

22           13.      AWJ, however, was fully notified in writing of the Liquidating Capital Account  
23 provisions of the LP Agreement in the fall of 2011, and yet expressed no objections to those  
24 terms.

25           14.      By improperly withholding Fund amounts clearly distributed to it in error, AWJ  
26 has breached, and continues to breach, its obligations under the LP Agreement.

27           15.      In addition to withholding the erroneously distributed Fund amounts, AWJ claims  
28 that it is owed \$131,216.17 in audit holdbacks related to the 2012 audit with interest. However,

1 the result of the 2012 audit was confirmation by Artis's outside auditor Rothstein Kass  
2 ("Rothstein") that AWJ should not have received the \$778,244.35 paid out in error by Goldman.

3 16. Plaintiff therefore brings this action seeking a judgment against AWJ providing for  
4 the immediate return by AWJ of all monies it owes to the Fund, for the payment by AWJ of all  
5 available pre-judgment and post-judgment interest on the improperly withheld funds, all damages  
6 according to proof resulting from AWJ's continuing withholding of monies belonging to the Fund  
7 in violation of the LP Agreement, and all available attorneys' fees and costs of suit incurred by  
8 Plaintiff in connection with this action, and providing for all other and further relief that the Court  
9 deems appropriate.

#### 10 **THE PARTIES**

11 17. Plaintiff Stuart L. Peterson is a resident of California and President and Portfolio  
12 Manager of Artis.

13 18. Defendant AWJ is a Delaware limited partnership with its principal place of  
14 business at 222 South 9th Street, Suite 3035, Minneapolis, MN 55402.

#### 15 **JURISDICTION AND VENUE**

16 19. Jurisdiction is proper in this court pursuant to 28 U.S.C. § 1332 because the parties  
17 are citizens of different States and the matter in controversy exceeds the sum or value of \$75,000.  
18 Plaintiff is a citizen of California and AWJ is a citizen of Delaware and of Minnesota.

19 20. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a  
20 substantial part of the events or omissions giving rise to this action occurred in this district.

21 21. Jurisdiction and venue are further proper in this Court because this is an action for  
22 breach of the LP Agreement in which the parties expressly consent and specifically submit to the  
23 jurisdiction and venue of this Court with respect to any suit, action, or proceeding between or  
24 among any of the parties to the LP Agreement or their affiliates arising out of, relating to or in  
25 connection with the LP Agreement or the Fund.

#### 26 **THE PRESENT CONTROVERSY**

##### 27 **A. AWJ Is Notified Of The Liquidating Capital Accounts**

1           22.     On October 26, 2011, Artis sent a letter to all of the Fund's investors, including  
2     AWJ, providing notice specifically regarding certain restrictions on the investors' redemption  
3     requests with respect to the Fund's holdings in shares of a clean technology company called Kior,  
4     Inc. ("Kior").

5           23.     As Artis explained in its October 26, 2011 letter to the Fund's investors, the Kior  
6     shares held by the Fund had certain contractual and legal restraints at the time that limited the  
7     shares' liquidity. Further, Artis explained to the Fund's investors that Artis had made the  
8     determination as the General Partner of the Fund that it was in the best interests of the Fund and  
9     its investors to segregate the Fund's holdings in Kior shares, such that investors who requested  
10    redemptions would receive both a cash distribution and an allocated interest in the Fund's Kior  
11    investment, thus allowing Artis to monetize the Fund's investment in Kior in a more optimal  
12    manner over time.

13          24.     On November 14, 2011, Artis sent a follow-up letter to all of the Fund's investors,  
14    including AWJ, providing notice specifically regarding the amendment of the LP Agreement to  
15    provide for a "Liquidating Capital Account" with respect to the Fund's Kior shares for any  
16    investor that requested a withdrawal of capital from the Fund on or after December 31, 2011. A  
17    copy of the amended and restated LP Agreement was attached to the November 14, 2011 letter  
18    from Artis to AWJ, showing the changes to the agreement pertaining to the Liquidating Capital  
19    Accounts.

20          25.     The LP Agreement as amended provides that, whenever an investor requests a  
21    withdrawal of capital from the Fund while the Fund holds Kior shares, the investor will receive  
22    both a distribution of an amount in cash and retention of an interest in a "Liquidating Capital  
23    Account" that will primarily track the Fund's profits and losses related to those Kior shares from  
24    the time they are allocated to the investor's Liquidating Capital Account to the time of the  
25    liquidation of those shares.

26          26.     The LP Agreement as amended provides that, if and only if the Fund liquidates its  
27    holdings in Kior shares, Artis will at that time determine how to allocate those liquidated Kior  
28    shares among investors' Liquidating Capital Accounts and investors' regular Capital Accounts.

1 The LP Agreement specifically provides that investors are not permitted to withdraw the balances  
2 of their Liquidating Capital Accounts.

3 27. AWJ expressed no objections in response to Artis's notices of October 26 and  
4 November 14, 2011, pertaining to the Liquidating Capital Account provisions of the Fund and the  
5 amended LP Agreement. In fact, far to the contrary, in communications AWJ directed to Artis  
6 about other Artis funds in which AWJ had invested, AWJ acknowledged the fact that Kior shares  
7 were being treated as illiquid in those funds. As set forth next, AWJ purported to raise such an  
8 objection to Kior's treatment in the Fund only after it received the windfall of an overpayment  
9 that resulted from an administrative error.

10 **B. The Fund Administrator Erroneously Distributes An Overpayment To AWJ**  
11 **In The Amount Of \$778,244.35**

12 28. By letter to Artis dated January 30, 2012, AWJ requested a full redemption of  
13 AWJ's interests in the Fund, effective as of March 31, 2012.

14 29. On January 31, 2012, the day after AWJ's redemption request, Artis sent AWJ a  
15 spreadsheet, per AWJ's request, showing the status and value of the illiquid portion of AWJ's  
16 investment in the Fund representing Kior shares.

17 30. In connection with the preparation of the net asset values (NAV) for the Fund,  
18 Goldman as administrator to the Fund duly recorded the allocation of AWJ's pro rata share of the  
19 illiquid Kior shares on the redemption date of March 31, 2012 (\$778,244.35) into a Liquidating  
20 Capital Account in the name of AWJ.

21 31. However, when Goldman provided funds to AWJ in response to AWJ's Fund  
22 redemption request on April 26, 2012, due to an administrative oversight, Goldman included the  
23 \$778,244.35 that had been allocated to the Liquidated Capital Account and that should have been  
24 excluded from the redemption pursuant to the operative terms of the LP Agreement.

25 **C. AWJ Is Promptly Notified Of The Erroneous Distribution, Yet Refused To**  
26 **Return The Overpayment To The Fund Where It Belongs**  
27  
28

1           32. Plaintiff is informed and believes, and thereupon alleges, that AWJ was informed  
2 of the mistaken \$778,244.35 overpayment in an email from Goldman dated May 1, 2012. AWJ  
3 was thus promptly notified, only three business days after the date of the overpayment, that it was  
4 not entitled to retain the erroneously distributed funds.

5           33. On May 9, 2012, Goldman again contacted AWJ to reiterate that the distribution  
6 AWJ received from the Fund on April 26, 2012 included \$778,244.35 that was distributed to  
7 AWJ by Goldman in error. Goldman explained to AWJ that this amount was equal in value to  
8 AWJ's Liquidating Capital Account, which had previously been established pursuant to the terms  
9 of the LP Agreement, with respect to the Fund's investment in illiquid shares of Kior.

10           34. As a follow-up to its conversation with AWJ, on May 9, 2012 Goldman re-sent to  
11 AWJ the November 14, 2011 notice and amended LP Agreement previously provided to AWJ by  
12 Artis, which specifically explained the establishment and operation of the Liquidating Capital  
13 Accounts for the Fund's Kior shares.

14           35. On May 18, 2012, Artis, through its counsel, sent AWJ a letter requesting the  
15 immediate return to the Fund of the \$778,244.35 overpayment to AWJ.

16           **D. Plaintiff Steps Forward to Cover the Shortfall to the Fund Caused by AWJ**

17           36. Notwithstanding Artis's clear demands, AWJ continued to refuse to return the  
18 overpayment. To ensure there would be no harm to the Fund and the other investors, Plaintiff,  
19 himself a limited partner in the Fund, agreed to have funds otherwise due to him from the Fund  
20 withheld to cover the deficit.

21           37. At the close of 2012, Artis's outside auditor Rothstein completed the Fund's  
22 Financial Statements and Independent Auditors' Report (the "Audit Report") in which it found an  
23 amount receivable of \$778,243 due from a limited partner, *i.e.* from AWJ. The Audit Report also  
24 noted that the amount receivable had been fully collateralized by an amount withheld by the Fund  
25 from an affiliated limited partner, meaning Plaintiff.

26           38. On September 17, 2013, Artis, through its counsel, again wrote to AWJ seeking  
27 return of the \$778,244.35 overpayment to AWJ. Artis reiterated its prior request that those  
28 erroneously paid funds be returned and also enclosed the Audit Report and cited to the LP

1 Agreement's provision requiring prompt repayment upon a determination by Artis's auditors that  
2 an investor received more than the balance of its Capital Account. Pursuant to the LP Agreement,  
3 the \$778,244.35 representing AWJ's pro rata share of the Fund's Kior holdings is not included in  
4 the balance of the Capital Account.

5 39. Effective June 30, 2014, Artis, as general partner of the Fund, assigned all of the  
6 Fund's right, title and interest in and to any causes of actions against AWJ to Plaintiff.

7 40. On October 3, 2014, Artis, acting on behalf of Plaintiff as assignee, through its  
8 counsel, yet again requested that AWJ return the funds it erroneously received and has wrongfully  
9 withheld for more than two years. Since AWJ had previously expressed hesitancy about its  
10 fiduciary duties with regard to the overpayment, Artis proposed arbitration to settle the parties'  
11 duties and resolve the dispute.

12 41. Despite the prompt and repeated communications from Artis and Goldman putting  
13 AWJ on ample notice that AWJ's withholding of the overpayment is unauthorized and improper;  
14 injurious to Artis, the Fund, and its investors; and in direct violation of the LP Agreement, AWJ  
15 has continually refused to return the overpayment to the Fund where it belongs.

16 42. AWJ has indicated that its refusal to return the overpayment is based ultimately on  
17 its dissatisfaction with Artis's decision as General Partner for the Fund to establish the  
18 Liquidating Capital Account structure, as set forth in the LP Agreement, with regard to the Fund's  
19 Kior investment. However, AWJ's disagreement with Artis's investment strategy does not  
20 constitute a legitimate excuse for AWJ's continuing breach of the LP Agreement through its  
21 improper retention of funds to which it is not entitled.

22 **D. AWJ Demands Return Of Audit Holdback**

23 43. The LP Agreement allows Artis to hold back a portion of a limited partner's full  
24 redemption pending finalization of the Fund's financial statements and review by auditors. Thus,  
25 when AWJ received its redemption on April 26, 2012, including erroneously the \$778,244.35 that  
26 should have remained in the Liquidating Capital Account, Goldman withheld on behalf of the  
27 fund \$131,216.17.  
28



1           44.     The result of the 2012 audit by Rothstein was, among other things, a finding that a  
2     limited partner, AWJ, had been overpaid by, and thus owed to the Fund, \$778,243.

3           45.     Under the terms of the LP Agreement, a limited partner that is found by the  
4     auditors to have been paid more than the balance of its Capital Account is required to promptly  
5     repay in cash the amount overpaid. Despite being notified of the administrative error in May  
6     2012 and of the results of the audit in a letter sent on September 17, 2013, AWJ has not repaid the  
7     excess amount that it received.

8           46.     AWJ, through its counsel, has not only continued to refuse to return the  
9     \$778,244.35 plus interest it has improperly withheld, but has demanded that Artis pay to AWJ the  
10    \$131,216.17 that had been held back in connection with Rothstein's 2012 audit plus interest.

#### 11                                   **COUNT ONE: BREACH OF CONTRACT**

12          47.     Plaintiff hereby incorporates by reference paragraphs 1 through 46, above, as if  
13    fully set forth herein.

14          48.     Artis, as General Partner of the Fund, and AWJ and Plaintiff, as limited partners of  
15    the Fund, entered into the operative LP Agreement, entitled Amended and Restated Agreement of  
16    Limited Partnership of Artis Clean Tech Partners (Institutional), L.P., effective as of November 1,  
17    2011. The LP Agreement is governed by Delaware law. § 29.

18          49.     The LP Agreement expressly provides that the balance of the Liquidating Capital  
19    Account established for any investor requesting a withdrawal from the Fund on or after December  
20    31, 2011 is not included as part of the investor's regular Capital Account eligible to be  
21    withdrawn. Specifically, Section 9.3(d) of the LP Agreement provides (emphasis added):

22                   From time to time the Partnership may own Illiquid Securities that the General  
23                   Partner believes should not be (i) sold to generate cash proceeds to fund Partner  
24                   withdrawals, (ii) distributed in kind or (iii) contributed to a Liquidating Fund to  
25                   facilitate Partner withdrawals. To address these situations, the General Partner  
26                   may, *in its exclusive discretion*, establish a "Liquidating Capital Account" with  
27                   respect to any Partner that requests withdrawal of all or any portion of its Capital  
28                   Account balance. *In this event, the General Partner may allocate such Partner's  
                    pro rata share of the applicable Illiquid Securities to that Liquidating Capital*

*Account as of the close of business on the withdrawal date.* The Liquidating Capital Account balance may not be withdrawn by that Partner under the normal withdrawal provisions described at the beginning of section 9.3(a) and that balance shall not be deemed part of that Partner's Capital Account. Such Partner's pro rata share of the applicable Illiquid Securities shall be based on the ratio of the amount that the Partner requests to be withdrawn on the applicable withdrawal date, including the applicable Illiquid Securities, to all Capital Account balances immediately prior to such withdrawal. ***Such Partner's initial Liquidating Capital Account balance shall equal the value of such pro rata share of such Illiquid Securities on that date, and an equivalent amount shall be debited from that Partner's Capital Account balance. Thus, such Partner's Capital Account balance as of the withdrawal shall not include the transferred balance, which, as noted above, may not subsequently be withdrawn from the Partnership.*** If any such Partner subsequently requests a withdrawal of additional amounts from its Capital Account when the Partnership continues to hold the applicable Illiquid Securities in the Partnership's regular Capital Account portfolio (that is, those Securities have not been allocated to one or more Liquidating Capital Accounts), that Partner shall be allocated additional shares of those Illiquid Securities to the same Liquidating Capital Account pursuant to the foregoing allocation methodology. The General Partner shall distribute the balance of each Liquidating Capital Account in cash or in kind (or both) when it deems appropriate less any contingencies that the General Partner identifies and elects to reserve for. Profits and Losses relating to the Illiquid Securities allocated to the Liquidating Capital Accounts shall be specially allocated to them, and not to the Capital Accounts, as provided in section 10.4(a). All other provisions of this Agreement shall be deemed amended to the extent the General Partner deems appropriate to incorporate Liquidating Capital Accounts, and the General Partner shall have discretion to apply these Liquidating Capital Account provisions as it deems appropriate.

50. Consistent with Section 9.3(d), Section 5.33 of the LP Agreement provides that "the portion of a Limited Partner's Capital Account balance that is transferred to a Liquidating Capital Account when a Limited Partner withdraws capital from the Partnership (as described in section 9.3(d)) shall not be deemed withdrawn from the Partnership for purposes of applying these Unrecouped Loss reduction provisions or any other provisions of this Agreement."

1           51. Consistent with Section 9.3(d), Section 9.3(a)(1) of the LP Agreement provides  
 2 that “the portion of a Limited Partner’s Capital Account balance that is transferred to a  
 3 Liquidating Capital Account when a Limited Partner withdraws capital shall not be deemed  
 4 withdrawn for purposes of calculating the foregoing withdrawal fees. Instead, any such amounts  
 5 shall be deemed withdrawn when balances in a Liquidating Capital Account are distributed to that  
 6 Limited Partner.”

7           52. Section 9.3(a)(5) permits Artis to hold back funds pending auditors’ review and  
 8 requires prompt repayment following notification of overpayment. Section 9.3(a)(5) provides:

9           Subject to section 9.3(b), if a withdrawal exceeds ninety-five percent of the  
 10 balance of a Limited Partner’s Capital Account, such ninety-five percent shall be  
 11 paid within thirty days after the applicable Permitted Withdrawal Date and the  
 12 remainder, if any, of the withdrawal shall be paid as soon as the General Partner  
 13 determines that it is reasonably practicable after the Partnership receives financial  
 14 statements for the Fiscal Year in which the withdrawal occurs compiled, reviewed  
 15 or audited by the Outside Accountants, ***but the total withdrawal paid may not***  
 16 ***exceed that Limited Partner’s Capital Account balance, as shown by those***  
 17 ***financial statements (and such remainder shall not earn interest or be***  
 18 ***considered to be invested in the Partnership), and if the Outside Accountants***  
 19 ***determine that the amount paid by the Partnership exceeds the Capital Account***  
 20 ***balance, that Limited Partner shall forthwith, on demand by the General***  
 21 ***Partner, repay such excess to the Partnership in cash.***

22           53. Pursuant to Sections 12.1(b) and 12.1(m) of the LP Agreement, Artis has the  
 23 power and authority to, among other things, “[e]nter into . . . assignments” and “[c]ollect amounts  
 24 due to the Partnership, enforce the Partnership’s rights, seek to recover compensation for injury or  
 25 damage to the Partnership or to prevent such injury or damage through litigation or other means  
 26 and engage and compensate lawyers, expert witnesses and others in connection therewith.”

27           54. Pursuant to Section 9.3(d) of the LP Agreement, Artis instructed Goldman that a  
 28 Liquidating Capital Account should be established with respect to AWJ after AWJ requested a  
 full redemption of its Fund Capital Account balance, to contain AWJ’s pro rata share of the  
 illiquid Kior share holdings as of the close of business on the requested redemption date of March  
 31, 2012.

1           55. Pursuant to Section 9.3(d) of the LP Agreement, Goldman recorded the allocation  
2 of AWJ's pro rata share of the Fund's Kior share holdings to AWJ's Liquidating Capital Account  
3 as of the close of business on the requested redemption date of March 31, 2012, in the amount of  
4 \$778,244.35. AWJ's Liquidating Capital Account was established before April 26, 2012, when  
5 Goldman admittedly distributed payment to AWJ in error, resulting in unjust enrichment of AWJ  
6 in the amount of \$778,244.35, plus interest.

7           56. Pursuant to Section 9.3(d) of the LP Agreement, AWJ's Liquidating Capital  
8 Account balance in the amount of \$778,244.35 cannot be deemed part of AWJ's Capital Account  
9 eligible for withdrawal and is not permitted to be withdrawn by AWJ under the normal  
10 withdrawal provisions applicable to regular Capital Accounts.

11           57. Pursuant to Section 9.3(a)(5), because the amount paid to AWJ was determined by  
12 Rothstein to have exceeded the balance of AWJ's Capital Account eligible for withdrawal, AWJ  
13 was required to repay the excess in cash forthwith following demand by Artis. Artis informed  
14 AWJ of Rothstein's finding and demanded repayment in its letter of September 17, 2013, but  
15 AWJ has continued to improperly retain the \$778,244.35 overpayment, plus accrued interest, for  
16 more than a year since that notification and demand. Accordingly, and pursuant to Section  
17 9.3(a)(5) of the LP Agreement, Artis has retained an audit holdback pending repayment by AWJ.

18           58. By withdrawing and continuing to improperly retain the \$778,244.35 value of its  
19 Liquidating Capital Account, without the authorization or permission of Artis, in violation of the  
20 express withdrawal restrictions applicable to the Liquidating Capital Account as specified in the  
21 LP Agreement, and in violation of the excess withdrawal repayment requirement imposed by the  
22 LP Agreement, AWJ has breached, and continues to breach, the LP Agreement.

23           59. Section 31 of the LP Agreement provides that:

24           If any dispute between or among any of the Partnership and the Partners or any of  
25 their respective Affiliates should result in litigation, the prevailing party or parties  
26 in such dispute shall be entitled to recover from the other party or parties all  
27 reasonable fees, costs and expenses, including, without limitation, reasonable  
28 attorneys' fees and expenses, incurred by the prevailing party or parties in  
connection therewith, all of which shall be deemed to have accrued on the

1 commencement of such action and shall be paid whether or not such action is  
2 prosecuted to judgment. Any award, judgment or order entered in such action  
3 shall specifically provide for the recovery of attorneys' fees and costs incurred in  
4 enforcing such award or judgment and an award of prejudgment interest from the  
5 date of the breach at the maximum rate allowed by law. For the purposes of this  
6 section 31, (a) attorneys' fees shall include, without limitation, fees incurred in  
7 postaward or postjudgment motions, contempt proceedings, garnishment, levy, and  
8 debtor and third party examinations, discovery, and bankruptcy litigation, and (b)  
9 prevailing party shall mean the party that is determined in the proceeding to have  
10 prevailed or who prevails by dismissal, demurrer, default or otherwise.

11 60. As a result of its breach of the LP Agreement, AWJ has caused Plaintiff to suffer  
12 injury and damages, including attorneys' fees, by refusing to return the amount of \$778,244.35,  
13 plus interest, it owed to Artis and the Fund, a debt that the Fund later assigned to Plaintiff after he  
14 stepped forward to cover the deficit to the Fund resulting from AWJ's intransigence. AWJ has  
15 known since at least May 1, 2012 that it is required to return those monies according to the terms  
16 of the LP Agreement. AWJ has knowingly misappropriated and unjustly deprived the Fund of  
17 valuable assets that the Fund was entitled to retain.

18 61. Effective June 30, 2014, the Fund assigned to Plaintiff its right, title, and interest  
19 in any cause of action against AWJ or any other party arising out of the overpayment to AWJ,  
20 including this cause of action for breach of contract.

## 21 **COUNT TWO: UNJUST ENRICHMENT**

22 62. Plaintiff hereby incorporates by reference paragraphs 1 through 61, above, as if  
23 fully set forth herein.

24 63. AWJ has been unjustly enriched at the Fund's and its investors' expense, including  
25 at the expense of Plaintiff, and it would be against equity and good conscience to allow AWJ to  
26 keep \$778,244.35, plus interest, to which it is not entitled.

27 64. When AWJ received the \$778,244.35 overpayment on April 26, 2012, that sum  
28 was required by the terms of the LP Agreement to remain in the Liquidated Capital Account and  
was not to be included in AWJ's redemption.



1 connection with this action.

2 5. For all other and further relief as the Court deems just and proper.

3  
4 Respectfully submitted,

5 Dated: February 11, 2015

6 CHRISTOPHER G. GREEN  
7 ROCKY C. TSAI  
8 ANNE JOHNSON PALMER  
9 ROPES & GRAY LLP

10 /s/ Rocky C. Tsai

11 ROCKY C. TSAI  
12 Attorney for Plaintiff  
13 STUART L. PETERSON  
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